

All Counsel Listed On Signature Page

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

BRANDYWINE COMMUNICATIONS
TECHNOLOGIES, LLC,

Plaintiff,

v.

AT&T CORP, et al.,

Defendants.

Civil Action No. 4-12-02494 CW

**PARTIES' STIPULATION AND JOINT
MOTION TO AMEND CASE SCHEDULE
OR ALTERNATIVELY REQUEST FOR A
FURTHER CASE MANAGEMENT
CONFERENCE**

Plaintiff Brandywine Communications Technologies, LLC ("Brandywine") and Defendants AT&T Corp. and SBC Internet Services, Inc. ("Defendants"), (collectively the "Parties") hereby stipulate and respectfully submit this stipulation and joint motion to amend certain dates in the case schedule, while preserving the mediation deadline, final pretrial conference, and trial date in the current case schedule; or alternatively request for a further case management conference ("Stipulation"). In support, the Parties state as follows:

On June 13, 2013, the Court issued an Order temporarily staying this case pending a decision by the Judicial Panel on Multidistrict Litigation ("JPML") on Brandywine's motion to consolidate. (Dkt. No. 81.) On August 8, 2013, the JPML denied Brandywine's motion. (*See* Dkt. No. 82.) On August 12, 2013, the Court lifted the stay and reset the claim construction hearing that had been scheduled for June 27, 2013 to September 5, 2013. (Dkt. No. 83). On August 26, 2013, the Parties filed a Stipulation and Joint Motion to Amend Case Schedule. (Dkt. No. 86.) The next day, the stipulation was granted in part. (Dkt. No. 87.) In particular, the meditation deadline, close of fact discovery, and due dates for expert reports were adjusted. (*Id.*) The other dates on the

1 schedule were left unchanged. (*Id.*)¹ On October 1, 2013, the Parties submitted a stipulation and
2 joint motion to extend the case schedule by approximately three months. (Dkt. No. 95.) On
3 October 7, 2013, the Court denied the stipulation. (Dkt. No. 96.)

4 Since receiving the Court's denial of the Parties' stipulation (Dkt. No. 95), the Parties have
5 conferred and respectfully submit this Stipulation that seeks to amend the schedule as set forth in
6 Attachment A in order to allow additional time for the Parties to complete necessary third party
7 discovery while preserving the mediation deadline, final pretrial conference, and trial date in the
8 current case schedule. The Parties state that there is good cause for this Stipulation for the
9 following reasons.

10 First, the Parties are currently in the process of coordinating discovery with numerous third
11 parties, including over ten equipment vendors, seven inventors, and several other parties with prior
12 and/or current interests in the asserted patents (collectively "Third Parties"). Because discovery of
13 many of these Third Parties overlap with discovery required in other pending cases involving the
14 asserted patents, Brandywine is attempting to coordinate discovery between several pending cases
15 in order to reduce the burdens on these Third Parties (*e.g.*, Brandywine is attempting to schedule
16 depositions of inventors at the same time for multiple cases). The proposed schedule in
17 Attachment A helps to better align the close of fact discovery with other pending cases in order to
18 assist the Parties in scheduling Third Party discovery. Second, the additional time for discovery
19 will assist the Parties in completing discovery that they were not able to complete during the time
20 this case was stayed during the JPML proceedings. Third, the Parties' Stipulation maintains the
21 present deadlines for mediation, the final pre-trial conference, and trial date in order to maintain the
22 current timeline to resolve this case and address any reservations the Court may have had to alter
23 these deadlines in its denial of the Parties' prior stipulation. (Dkt. No. 96.) The only date on the
24 Court's calendar the Parties' Stipulation seek to change is the motion hearing on dispositive
25 motions and further case management conference presently scheduled on April 17, 2014. The
26 Parties' Stipulation seeks to move this date two weeks until on or after May 1, 2014 at a time and

27 ¹ The only other modification to the schedule occurred on September 27, 2012 when the Parties
28 filed a stipulation to extend the time to serve infringement and invalidity contentions. (Dkt. No.
60). That stipulation was entered on October 2, 2012. (Dkt. No. 61).

1 date convenient for the Court. As a result, the Parties' Stipulation allows the Parties to better
2 schedule remaining discovery in a manner less burdensome on Third Parties while maintaining the
3 overall case schedule and mediation deadline. In further support of this Stipulation, the Parties
4 submit the attached declaration from Brandywine's counsel as set forth in L.R. 6-2.

5 Finally, should the Court find that this proposed amendment to the schedule is not
6 acceptable, the Parties respectfully request a telephonic case management conference in order to
7 allow the Parties to address any concerns the Court has with the Parties' proposed Stipulation.

8 IT IS SO STIPULATED.
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Respectfully submitted,

FARNEY DANIELS PC

DATED: October 16, 2013

By: /s/ Tim Devlin

Timothy Devlin (admitted *pro hac vice*)
Jonathan D. Baker (Cal. Bar No. 196062)
Brian H. VanderZanden (Cal Bar No. 233134)
Lei Sun (Cal. Bar No. 251304)
FARNEY DANIELS PC
800 S. Austin Ave., Suite 200
Georgetown, Texas 78626
Telephone: (512) 582-2828
Facsimile: (512) 582-2829
E-Mails: tdevlin@farneydaniels.com
jbaker@farneydaniels.com
bvanderzanden@farneydaniels.com
lsun@farneydaniels.com

Attorneys for Plaintiff
BRANDYWINE COMMUNICATIONS
TECHNOLOGIES, LLC

KILPATRICK TOWNSEND & STOCKTON LLP

DATED: October 16, 2013

By: /s/ Daniel S. Young

William H. Boice (admitted *pro hac vice*)
Russell A. Korn (admitted *pro hac vice*)
Daniel S. Young (admitted *pro hac vice*)
Robert J. Artuz (Cal. Bar No. 227789)
KILPATRICK TOWNSEND & STOCKTON LLP
1080 Marsh Road
Menlo Park, CA 94025
Telephone: (650) 326-2400
Facsimile: (650) 326-2422
Emails: bboice@kilpatricktownsend.com
rkorn@kilpatricktownsend.com
dyoung@kilpatricktownsend.com
rartuz@kilpatricktownsend.com

Attorneys for Defendants
AT&T CORP. and SBC INTERNET SERVICES, INC.

FILER'S ATTESTATION

Pursuant to Civil Local Rule 5-1(i)(3), Lei Sun, hereby attests that the concurrence in the filing of this document has been obtained from the other signatories, which shall serve in lieu of their signatures.

/s/ Lei Sun

Lei Sun

ATTACHMENT A**PARTIES' PROPOSED AMENDED SCHEDULE**

EVENT	Current Schedule	Parties' Proposal
Mediation Deadline	11/1/13	No change
Close of Fact Discovery	12/6/13	1/17/14
Plaintiff Serves Opening Infringement and Damages Expert Reports; Defendants Serve Opening Invalidity Expert Report	12/13/13	1/24/14
Parties Serve Rebuttal Expert Reports	1/31/14	2/28/14
Expert Discovery Deadline	2/21/14	3/19/14
Plaintiff's Opening Dispositive and <i>Daubert</i> Motions Deadline	2/20/14	3/19/14
Defendants' Dispositive and <i>Daubert</i> Motions and Oppositions	3/13/14	4/2/14
Plaintiff's Replies	3/27/14	4/9/14
Defendants' Last Round of Replies	4/3/14	4/16/14
Hearing on All Dispositive Motions	4/17/14 2:00 p.m.	On or after 5/1/14 as set by the Court based on its availability
Further Case Management Conference	4/17/14	On or after 5/1/14 as set by the Court based on its availability
Final Pretrial Conference	7/30/14 2:00 p.m.	No change
Jury Trial	8/11/14 8:30 a.m.	No change

ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED:

DATED: 11/18/2013


Hon. Claudia Wilken
United States District Court Judge

1 Timothy Devlin (admitted *pro hac vice*)
Jonathan D. Baker (Cal. Bar No. 196062)
2 Brian H. VanderZanden (Cal Bar No. 233134)
Lei Sun (Cal. Bar No. 251304)
3 FARNEY DANIELS PC
800 S. Austin Ave., Suite 200
4 Georgetown, Texas 78626
Telephone: (512) 582-2828
5 Facsimile: (512) 582-2829
E-Mails: tdevlin@farneydaniels.com
6 jbaker@farneydaniels.com
bvanderzanden@farneydaniels.com
7 lsun@farneydaniels.com

8 Attorneys for Defendants
BRANDYWINE COMMUNICATIONS TECHNOLOGIES, LLC
9

10
11 **UNITED STATES DISTRICT COURT**
12 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
13 **OAKLAND DIVISION**

14 BRANDYWINE COMMUNICATIONS
15 TECHNOLOGIES, LLC,

16 Plaintiff,

17 v.

18 AT&T CORP, et al.,

19 Defendants.
20
21
22
23
24
25
26
27
28

Civil Action No. 4-12-02494 CW

**DECLARATION OF LEI SUN IN
SUPPORT OF PARTIES' STIPULATION
AND JOINT MOTION TO AMEND CASE
SCHEDULE OR ALTERNATIVELY
REQUEST FOR A FURTHER CASE
MANAGEMENT CONFERENCE**

1 I, Lei Sun, declare as follows:

2 1. I am an attorney in the firm Farney Daniels PC, and one of the attorneys for Plaintiff
3 Brandywine Communications Technologies, LLC (“Plaintiff”). I have personal knowledge of the
4 matters stated herein and, if called as a witness, could competently testify thereto under oath.

5 2. The Parties stipulate and move to amend the case schedule or alternatively request
6 for a further case management conference as set forth in Attachment A to the Parties’ Stipulation
7 and Joint Motion to Amend Case Schedule or Alternatively Request For A Further Case
8 Management Conference (“Stipulation”).

9 3. The schedule in this case has previously been amended as follows. On June 13,
10 2013, the Court issued an Order temporarily staying this case pending a decision by the Judicial
11 Panel on Multidistrict Litigation (“JPML”) on Brandywine’s motion to consolidate. (Dkt. No. 81.)
12 On August 8, 2013, the JPML denied Brandywine’s motion. (*See* Dkt. No. 82.) On August 12,
13 2013, the Court lifted the stay and reset the claim construction hearing that had been scheduled for
14 June 27, 2013 to September 5, 2013. (Dkt. No. 83). On August 26, 2013, the Parties filed a
15 Stipulation and Joint Motion to Amend Case Schedule. (Dkt. No. 86.) The next day, the stipulation
16 was granted in part. (Dkt. No. 87.) In particular, the meditation deadline, close of fact discovery,
17 and due dates for expert reports were adjusted. (*Id.*) The other dates on the schedule were left
18 unchanged. (*Id.*)¹ On October 1, 2013, the Parties submitted a stipulation and joint motion to
19 extend the case schedule by approximately three months. (Dkt. No. 95.) On October 7, 2013, the
20 Court denied the stipulation. (Dkt. No. 96.)

21 4. There is good cause for the continuance because the Parties are currently in the
22 process of coordinating discovery with numerous third parties, including over ten equipment
23 vendors, seven inventors, and several other parties with prior and/or current interests in the asserted
24 patents (collectively “Third Parties”). Because discovery of many of these Third Parties overlap
25 with discovery required in other pending cases involving the asserted patents, Brandywine is
26

27 ¹ The only other modification to the schedule occurred on September 27, 2012 when the Parties filed
28 a stipulation to extend the time to serve infringement and invalidity contentions. (Dkt. No. 60).
That stipulation was entered on October 2, 2012. (Dkt. No. 61).

1 attempting to coordinate discovery between several pending cases in order to reduce the burdens on
2 these Third Parties (*e.g.*, Brandywine is attempting to schedule depositions of inventors at the same
3 time for multiple cases). The proposed schedule in Attachment A helps to better align the close of
4 fact discovery with other pending cases in order to assist the Parties in scheduling Third Party
5 discovery.

6 5. There further is good cause for the continuance because the additional time for
7 discovery will assist the Parties in completing discovery that they were not able to complete during
8 the time this case was stayed during the JPML proceedings.

9 6. Finally, there is good cause for the continuance because the Parties' Stipulation
10 maintains the present deadlines for mediation, the final pre-trial conference, and trial date in order
11 to maintain the current timeline to resolve this case and address any reservations the Court may
12 have had to alter these deadlines in its denial of the Parties' prior stipulation. (Dkt. No. 96.) The
13 only date on the Court's calendar the Parties' Stipulation seek to change is the motion hearing on
14 dispositive motions and further case management conference presently scheduled on April 17,
15 2014. The Parties' Stipulation seeks to move this date two weeks until on or after May 1, 2014 at a
16 time and date convenient for the Court. As a result, the Parties' Stipulation allows the Parties to
17 better schedule remaining discovery in a manner less burdensome on Third Parties while
18 maintaining the overall case schedule and mediation deadline.

19 7. Thus, the Parties' Stipulation does not affect the July 30, 2014 Final Pretrial
20 Conference date or the August 11, 2014 trial date set by Court order.

21 8. For the reasons set forth above, good cause exists to amend the case schedule. The
22 Parties agree to the schedule set forth in Attachment A to the Parties' Stipulation.

1 I declare under penalty of perjury under the laws of the United States of America that the
2 foregoing statements are true and correct.

3 Executed this 16th day of October, 2013 at Georgetown, Texas.

4
5 /s/ Lei Sun

Lei Sun

6 Attorney for Plaintiff
7 BRANDYWINE COMMUNICATIONS
8 TECHNOLOGIES, LLC
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28